IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.6019 of 2007
AMIT KUMAR VERMA
Versus
DEO NATH SHARMA & STATE OF BIHAR
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3 28.08.2008 Heard Sri Baxi S.R.P.Sinha, Senior Advocate, the learned counsel for the petitioner and Sri Jharkhandi Upadhaya, the learned A.P.P. for the State.

Through this application the petitioner has prayed for the quashing of the entire criminal proceeding including the order dated 5.4.2000 passed by the learned Judicial Magistrate , Ara in Complaint Case No.29 (C) of 1999 whereby he has taken cognizance and issued process against the petitioner and others to face their trial for offences under Sections 147,148,323,341,504,379,427 I.P.C.

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The complainant, impleaded herein as Opp.Party no.1 was duly served with notice but he has chosen not to appear and contest this application.

The complainant filed the aforesaid complaint on 13.1.1999 in respect of an occurrence which allegedly took place around 8 A.M. on 15.12.1998. It is said that for the same occurrence the petitioner had reported to the police earlier at about 10 A.M. on the same day itself for which Ara (Town) P.S. Case no.331 of 1998 was instituted against the complainant and another wherein cognizance having been taken the trial is going on.

The petitioner has assailed the impugned order on two counts . It was first submitted that the complaint was filed after a

delay of 28 days and the explanation offered therefor was that the complainant had gone to the Town P.S. at about 8.30 A.M. to report the matter and he was told that the case would be instituted only upon arrival of the ***Bara Babu*** . Having waited for half an hour he went to the residence of the Superintendent of Police, Bhojpur, where he submitted a written report to the constable on duty who received the same and signed on the carbon copy thereof, in token of having received the written report. The grievance of the petitioner is that when the fact of the written report having been submitted to the constable was divulged in the complaint, the learned Magistrate ought to have called for a report from the police before proceeding with the complaint. This not having been done, the progress with the complaint case was vitiated.

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I am not impressed with this submission advanced on behalf of the petitioner as he has approached this Court after almost seven years and sufficient progress must have been made with the trial arising from the complaint case.

However, the second limb of argument on behalf of the petitioner has sufficient force. It is his submission that since there is a police case and a complaint case in respect of the same occurrence, the procedure laid down in Section 210 Cr.P.C. ought to have been followed.

Accordingly, the matter is remitted back to the court below for fresh consideration. However, it is made clear that if there has been sufficient progress in the trial arising out of the complaint case,

the learned Magistrate shall ignore giving the matter a fresh consideration as the petitioner will have to face the consequences of having approached this Court so belatedly.

(Abhijit Sinha, J)

NKS/-

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